

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 19-126

NORTHERN UTILITIES, INC.

2019-2024 Integrated Resource Plan

Order on Northern Utilities' Motion for Rehearing

O R D E R N O. 26,689

September 19, 2022

In this order the Commission denies the Northern Utilities motion for rehearing and clarifies Order No. 26,664.

I. PROCEDURAL HISTORY

On August 8, 2022, the Commission issued Order No. 26,664 (Order), which accepted the Working Group Report and adopted the report with modifications. The Working Group Report contained recommendations for changes to be made in Northern Utilities Inc.'s (Northern's) next LCIRP. The Order also extended the deadline for Northern to file its next LCIRP until March 31, 2023. On August 17, 2022, the Office of the Consumer Advocate (OCA), moved pursuant to RSA 541:3 for rehearing and, in the alternative, for clarification of the Order. On September 7, 2022, Northern, moved pursuant to RSA 541:3 for rehearing of the Order. The Commission suspended the Order on September 13, 2022, pending its consideration of the two motions. See Order No. 26,683.

II. BACKGROUND

As part of the May 27, 2020, Settlement Agreement (Settlement), the settling parties agreed to convene a working group (Working Group) to discuss, among other things, potential approaches and recommendations regarding the assessment of

environmental, economic, and health-related impacts in LCIRPs, as required under RSA 378:37–40 (the LCIRP Statute). The settling parties agreed to provide Working Group recommendations to the Commission proposing guidance regarding expectations under the LCIRP Statute for future LCIRPs. The Commission issued Order No. 26,382 (July 23, 2020), approving the Settlement and imposing a deadline of July 1, 2021, for the settling parties to file a report of the Working Group discussions and any agreement reached on the content of future LCIRP filings. Order No. 26,382 also set a deadline of July 1, 2022, for Northern to file its next LCIRP.

Following requested extensions of these two deadlines, the Working Group submitted its final report to the Commission on March 31, 2022. The settling parties (Northern, OCA, and DOE) claimed that the Working Group Report provides a reasonable road map for Northern and other parties to understand the requirements and expectations of the LCIRP Statute. The settling parties requested that the Commission accept the Working Group Report and approve its recommendations for inclusion in Northern’s next LCIRP.

The Order stated that the Commission was modifying the working group’s recommendations and providing “guidance on the contents of future Least Cost Integrated Resource Plans.” Order No. 26,664 at 1. The Order responded to the Working Group’s eight principal recommendations.

- Recommendation 1: Evaluate incremental energy efficiency as a potential resource alternative and look for opportunities for C&I customer fuel switching.

The Order clarified that the scope of ratepayer funded energy efficiency was established legislatively and suggested that Northern’s LCIRP should be consistent with legislative guidance. The Order also found that promoting fuel switching was beyond the scope of an LCIRP.

- Recommendation 2: Evaluate renewable natural gas (RNG) as an alternative to traditional fuel supply explore certified gas (CG).

The Order supported this recommendation but clarified that the RNG would need to be the least cost option to be added to natural gas supply.

- Recommendation 3: Assess resources in terms of environmental impacts by documenting the greenhouse gas (GHG) impacts of evaluated resources in terms of emissions (MMT CO₂e) created or avoided and an estimate of associated monetary impact.

The Order supported this recommendation but limited the scope of this inquiry to emissions caused by leakage from the Northern distribution system.

- Recommendation 4: Assess public health impacts in terms of the health effects of local air quality (AQ) impacts of evaluated resources by documenting SO_x, NO_x and PM_{2.5}, projecting health impacts and estimating the monetary impact.

The Order supported this recommendation but clarified that these impacts should be based upon leakage of pollutants from the Northern distribution system.

- Recommendation 5: Assess economic development impacts by estimating direct, indirect, and induced jobs created from a resource and the associated economic development impact.

The Order supported this recommendation but clarified that Northern's analysis should not involve the independent development of complex economic models. Instead, the order suggested that Northern should rely upon models and economic data already available and should target jobs in New Hampshire.

- Recommendation 6: Expand Northern's evaluation methods to include review of environmental, public health and economic development impacts of resource alternatives. Northern may separately present customer financial costs and evaluated societal costs due to environmental, public health and economic impacts.

The Order referenced the earlier clarification of Recommendations 3, 4 and 5.

- Recommendation 7: When assessing resource alternatives, identify opportunities to incorporate Non-Pipeline Alternatives that could avoid or defer reinforcements costs associated with distribution system infrastructure and seek to incorporate such opportunities as resource options are developed.

The Order supported this recommendation.

- Recommendation 8: Incorporate new material relating to the recommendations contained in this Report into Northern's LCIRP document in a logical manner, revisit the structure of Northern's Resource Impact Summary table, and look for opportunities to better label narrative sections to more clearly guide the reader.

The Order supported this recommendation.

The Order also noted a ten-year history of increasing distribution rate base and operational costs for Northern and announced the Commission's intent to focus on Northern's distribution planning and capital investment, in addition to its natural gas supply planning, in its next LCIRP.

III. POSITIONS OF THE PARTIES

A. Northern's Motion for Rehearing

1. Distribution System Capital Planning

Northern argues that the Commission, without sufficient notice or record to support such changes, makes two fundamental changes in Northern's future LCIRP filings. First, according to Northern, the Commission includes both gas supply planning and distribution system capital planning in Northern's next LCIRP. Northern claims this change is contrary to prior Commission decisions and is not supported by the LCIRP statute or other legal authority.

Second, by requiring Northern to subject its long-term capital planning and project information to Commission review in an LCIRP, Northern argues that the Commission has improperly interjected itself into Northern's planning process in a manner contrary to its role as regulator and beyond the Commission's statutory authority. Northern then requests more detail concerning the iterative process of distribution capital investment planning and reporting outlined in the order.

Finally, noting that similar distribution system planning guidelines were issued in Order No. 26,666 (August 15, 2022) pertaining to Unitil's New Hampshire electric distribution company, Northern claims that such directives concerning Northern's

next LCIRP must be issued as rules of general applicability under the New Hampshire Administrative Procedure Act, RSA Chapter 541-A.

2. Working Group Recommendations

Recommendation 1

Northern repeats concerns described in the OCA Motion for Rehearing that the Commission's limit on ratepayer funded energy efficiency (EE) pursuant to HB 549 2022 legislative session, RSA 374-F:3, VI-a, is contrary to the LCIRP Statute and the State Energy Policy. Further, Northern argues that fuel switching should be included in the LCIRP.

Recommendation 2

Northern claims that newly enacted RSA 362-I:2, I requires the Commission to consider renewable natural gas as supply in an LCIRP even if it is not the lowest cost supply. Northern claims that other factors should overcome lowest cost goals.

Recommendation 3

Northern objects to the Commission's limitation of emissions in its LCIRP to those caused by leakage from the distribution system and argues that the LCIRP statute requires analysis of emissions from end user customer's combustion of the natural gas delivered by Northern. In support of its argument Northern points to the LCIRP Statute's requirement that Northern assess environmental impacts of various resources and the requirement that Northern comply with the Clean Air Act.

RSA 378:37

Northern asserts that the statutory energy policy contained in RSA 378:37, as well as the recent 10-year State Energy Strategy, requires the Commission to consider factors other than cost when evaluating options under an LCIRP. Northern claims that

the Commission's focus on reducing supply and distribution costs lacks balance and is not supported by the LCIRP Statute or the 10-year State Energy Strategy.

Recommendation 5

Northern argues that the Commission's reference to estimating the economic impacts resulting from the past 20 years of Northern's distribution investment is not forward looking. Further, Northern finds the Commission's requirements unclear and unworkable.

Recommendation 8

Northern notes that it may need to use outside resources to produce its next LCIRP depending upon a clarification of the guidance provided by the Commission in its Order.

IV. COMMISSION ANALYSIS

The Commission may grant rehearing for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Tel. Cos.*, Order No. 25,291 (November 21, 2011); *see also Pub. Serv. Co. of N.H. d/b/a Eversource Energy*, Order No. 25,970 at 4-5 (December 7, 2016). A successful motion must establish good reason by showing that there are matters that the Commission "overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was "unavailable prior to the issuance of the underlying decision," *Hollis Tel. Inc.*, Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Pub. Serv. Co. of N.H.*, Order No. 25,970, at 4-5 (citing *Pub. Serv. Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

We find that none of Northern's legal arguments require us to reconsider the conclusions reached in the Order. For clarity we will address Northern's specific arguments below.

Commission Jurisdiction over Northern's Capital Improvements

Although, Northern acknowledges that the Commission is not bound by prior Commission decisions, it claims that the Commission has failed to provide statutory authority for its review of distribution capital investments in Northern's LCIRP.

RSA 378:38, IV provides, that an LCIRP should include: "An assessment of distribution and transmission requirements, including an assessment of the benefits and costs of 'smart grid' technologies, and the institution or extension of electric utility programs designed to ensure a more reliable and resilient grid to prevent or minimize power outages, including but not limited to, infrastructure automation and technologies."

The Commission's statutory authority includes the express language as well as all powers reasonably implied. *Public Service Company of N.H.*, 122 N.H. 1062, 1066 (1982). We interpret the language "distribution and transmission requirements" in RSA 378:38, IV to include a review of a natural gas utility's distribution capital investment planning. Further, our general supervisory authority over the public utilities we regulate clearly includes such inquiries. See RSA 374:1, :2, :3, :4 and :5.

We acknowledge that earlier Commission decisions have either waived or not applied this requirement to examine the distribution system planning in natural gas distribution LCIRPs. Nonetheless, the Commission's regulatory powers provide a sufficient legal basis for the Commission to discontinue the earlier practice of waiving this provision of the LCIRP Statute. Because we find that the language of RSA 378:38-39, as well as RSA Chapter 374, provides the Commission with statutory authority to

review distribution planning and capital investment, Northern has not provided the Commission with a basis to reconsider the Order on this point.

Northern's Management of its Distribution System

The Order outlines reporting requirements and a Commission review process for Northern's distribution system planning and capital investment. Northern claims on the one hand that these requirements improperly interfere with its management of its distribution assets, and on the other that the process outlined lacks sufficient clarity. The Order makes clear that the Commission does not intend to interfere with Northern's management decisions. Nonetheless, those management decisions must be subject to some Commission oversight. The balance of regulation and utility management prerogative is best achieved in an adjudicative proceeding where specific planning decisions can be reviewed. As discussed below, Northern and the parties will be able to litigate those issues fully in Northern's next LCIRP proceeding. Given the opportunity to further refine regulatory requirements in future proceedings, we do not find a basis to reconsider the Order on this point.

Adequacy of Notice and Due Process

The Order of Notice announced that the Commission would consider whether the Northern LCIRP complied with the LCIRP Statute. That notice reasonably included consideration of any improvements or changes required in Northern's future LCIRP filings. No party can plausibly claim surprise regarding consideration of future LCIPRs when the Commission reviews an LCIRP. Each of the three Northern LCIRP filings since 2010 have resulted in Commission orders regarding the LCIRP filed in the docket, as well as guidance for future LCIRP filings. *See* Order Nos. 26,027 (June 19, 2017) at 6-7, 25,641 (March 26, 2014) at 5, and 25,089 (April 5, 2010) at 11-12. Even if these three prior dockets did not exist, the fact remains that Northern asked the

Commission to review and approve the Working Group recommendations. Northern cannot credibly claim that it lacked notice that the Commission would do exactly what Northern asked the Commission to do. Further, the Working Group report clearly included extensive discussion of recommendations for future Northern LCIRP filings. Because we find that the notice provided in this docket as well as the Working Group report itself, reasonably informed the parties of possible guidance regarding future Northern LCIRPs, Northern has not provided the Commission with a basis to reconsider its order on this point.

Interpretation of Lowest Reasonable Cost

Northern claims that the Commission improperly emphasizes lowest reasonable cost when interpreting the LCIRP Statute and does not give due weight to other statutory requirements. Northern further asserts that newly enacted RSA 362-I:2, I requires the Commission to consider renewable natural gas as a supply resource in an LCIRP whether or not the renewable supply is higher cost than other supply alternatives.

The Order analyses each of the eight working group recommendations as well as the criteria under RSA 378:38 and :39. All of that analysis addresses factors other than least cost. Nonetheless, the language in the LCIRP Statute clearly requires the Commission to prioritize lowest cost in choosing resources:

“... Where the commission determines the options **have equivalent financial costs**, equivalent reliability, and equivalent environmental, economic, and health-related impacts, the following order of energy policy priorities shall guide the commission's evaluation:
I. Energy efficiency and other demand-side management resources;
II. Renewable energy sources (SB 424 added including renewable natural gas);
III. All other energy sources.”

RSA 378:39 (emphasis added)

The language requires the Commission to first determine that resources present “equivalent financial costs” before considering the listed energy policy priorities. Northern’s arguments that the Commission has improperly prioritized least cost in evaluating Northern’s future LCIRPs are not supported by the language of the LCIRP statute, and we therefore find no basis for granting Northern’s motion for rehearing on this point.

Limitations on Ratepayer Funded Energy Efficiency

The Commission’s recognition in the Order of the recent legislative decisions regarding limitations on spending on ratepayer funded energy efficiency is proper deference to the legislative policy makers. *See* HB 549 2022 legislative session, RSA 374-F:3, VI-a, (establishing customer rates to be used to fund energy efficiency measures for electric and natural gas customers). The Order does not limit other non-ratepayer funded energy efficiency or load curtailment programs in the context of a future Northern LCIRP. Such programs might include grants or tariffed energy efficiency and load curtailment offerings in which costs are borne by the participating customers and not by ratepayers generally. Because the Order’s guidance is consistent with legislative directives, Northern has not provided the Commission with a basis to reconsider its order on this point.

Analysis of Greenhouse Gas Emissions

The Commission determined that Northern need not attempt to analyze the environmental impact of its customers’ combustion of the natural gas they receive over the Northern distribution system. Natural gas is a fuel with known emissions when combusted. Questions of whether to phase out the use of natural gas and switch customers to other non-gas fuels in order to reduce emissions, are beyond the scope of the LCIRP Statute. Those environmental concerns are better suited to environmental

policy decisions made at the State and Federal level. Instead, the LCIRP Statute is focused on Northern's efficient and least cost operation of its natural gas distribution system as well as its supply procurement. Northern has not provided the Commission with a basis to reconsider its order on this point.

Requirement for Rulemaking

Northern claims, based on a recent Commission order in an LCIRP docket involving Northern's electric distribution affiliate, that guidance on distribution system capital investment in LCIRPs should be given through a rulemaking docket. LCIRPs are reviewed through adjudicative proceedings as required by RSA 378:39. "The commission shall review integrated least-cost resource plans in order to evaluate the consistency of each utility's plan with this subdivision, **in an adjudicative proceeding....**" *Id.* (emphasis added). The LCIRP process lends itself to adjudication because, each utility has its own unique service territory, distribution infrastructure and supply procurement requirements. As provided by statute, the Commission has reviewed Northern's prior LCIRPs through a succession of adjudicated proceedings with adjustments following each adjudication to improve subsequent LCIRP filings.

The Commission agrees that any *binding* and generally applicable requirements to future LCIRPs would need to be promulgated through the rulemaking process.¹ See RSA 541-A:1, XV. The Commission, however, has issued no such requirements here. As explained in greater detail below, this guidance is simply that—guidance. The Commission makes this guidance available to the parties through this order, consistent with RSA 541-A:16, II(a). But the guidance is without prejudice to

¹ Of note, the State Energy Strategy referenced by Northern, which consists primarily of recommendations, is adopted pursuant to RSA 12-P:7-a and not through the RSA 541-A rulemaking process.

Northern's right to file any future LCIRP that is consistent with the statutory requirements.

Clarification of the Order

In the Order the Commission responds to the Working Group recommendations for Northern's next LCIRP and interprets the LCIRP statute to give Northern guidance as to the Commission's focus and expectations for Northern's next LCIRP. The Commission makes clear here that this guidance is not binding—nor could it be. Rather, in the interest of efficient process, the Commission provides these expectations but remains open to receiving and reviewing any LCIRP that is consistent with the applicable statutes. In that proceeding Northern and the parties will have an opportunity to litigate the adequacy of that LCIRP as well as the Commission's interpretation of the requirements of the LCIRP Statute.

Based upon the foregoing, it is hereby

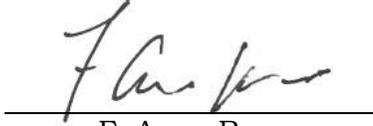
ORDERED, the motion for rehearing is DENIED; and it is

FURTHER ORDERED, that the motion for clarification is GRANTED as discussed herein.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of September, 2022.



Daniel C. Goldner
Chairman



F. Anne Ross
Special Commissioner

Service List - Docket Related

Docket# : 19-126

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